

## **PREFACE**

Ireland's penal policy is not working.

Irish prisons are costly, overcrowded and ineffective. Our prison population has almost doubled in a decade and is increasing at the rate of 10% each year. The average cost of providing a prison space in 2009 was €79,307, yet the latest figure show that the numbers of prisoners sentenced to three months or less is rising. And as the numbers increase, the prisons are even more dangerous and less effective. Almost 60% of all prisoners now share cells intended for single occupancy. Many still have to slop out their night waste and many are locked up for most of the day and night. And even with this overcrowding, our system is also among the most expensive prison systems (per person) in the world.

It ought to be clear that we cannot continue like this.

It will remain a fact of life that for some offenders there is no alternative to imprisonment. Undoubtedly, those engaged in serious criminal activity, and persons convicted of crimes of violence and offences against the person must be imprisoned to protect society. However, there are hundreds of people who enter our prisons because public policy has shown minimal interest in devising alternatives to imprisonment. Instead, more and tougher-sounding criminal laws have become the standard response. Yet it is evident that "throwing legislation at the problem" is not working - and that re-offending rates remain high.

Generally Labour is not in favour of extending mandatory sentencing. In general, Labour favours judicial discretion over sentencing, but we want to see legislation introduced to guide sentencing practice and ensure greater consistency, while protecting the independence of the judiciary. Given the prevalence of very short sentences, we particularly want to see substantive reform of District Court sentencing practice. We also seek to address in this paper the area of youth justice, not only because of the devastating effect of crime and detention upon young people, but also because it is critical if we are to tackle the scourge of anti-social behaviour.

We believe that the measures proposed will enhance the effectiveness, the fairness and the justice of our penal system and will contribute significantly towards a fairer, safer and more secure society.

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**Pat Rabbitte TD**

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**Senator Ivana Bacik**

*“(Progress) must start from a recognition that untiring effort is needed to maintain the bonds of equity and trust which give society cohesion and purpose and to correct the deprivation and social disadvantage which play so large a part in creating dissidents and criminals. There can be no doubt that social inequity contributes to the disaffection and alienation which expresses itself in anti-social behaviour.”*

– Whitaker Report 1985

## **1. Introduction – Labour crime policies**

Labour has a long track record of developing coherent and rational policies on criminal justice, sentencing and penal reform. We believe in the need to develop a progressive and effective penal policy, based on clear principles and informed by solid evidence of what works in reducing crime and in creating a safer and more secure society.

In our policy document ‘Safe and Secure – Labour’s Plan for Safe and Secure Communities’. We set out our policy on measures necessary to create a safer society. A key recommendation was the need for the establishment of a new Garda Authority (staffed from within existing resources), the objectives of which would include the need to ensure that policing is more responsive to the needs of local communities. In addition, in that policy document we called for reform of the criminal court system and for the development of new measures to support victims of crime, and to tackle organised crime, domestic violence and anti-social behaviour.

This policy document builds on the work that Labour has already done to develop a criminal justice policy, by addressing the key changes that we believe need to be made to the penal system to create a fair and just policy on sentencing, imprisonment and alternatives to imprisonment.

Ireland is currently under-going a profound fiscal crisis that is placing severe pressure on all forms of public expenditure. Rather than blocking change, this pressure must be a spur to reform. As part of our fiscal strategy, Labour in Government will undertake a Comprehensive Spending Review that will examine all area of public spending, to ensure that public priorities and policy objectives are being delivered in the most effective and cost-efficient manner. The strategies set out in this document will form part of our review of spending in the area of criminal justice. It is our conviction that major reforms are needed to ensure that the criminal justice system provides for a safer society at a lower cost to the taxpayer, by switching away from the costly prison-based sentences and towards less costly non-custodial options, and greater use of open prisons for appropriate prisoners.

## **2. Core Principles for a Fair and Just Penal Policy**

Labour's policy plan for the Irish penal system is based on four core principles:

- We want to ensure a **safe and secure society for all**, with adequate protection and recognition for the rights of victims, a commitment to preventing recidivism and to working for the rehabilitation of offenders, to ensure public safety for all.
- The **human rights of all persons in the criminal justice system must be respected** in line with Ireland's obligations under international law and the Constitution. We are committed to respect for the dignity of everyone in society, including those we punish. We also believe that there is significant scope for greater tangible and practical supports for the victims of crime and of anti-social behaviour.
- We are committed to the principle of **imprisonment as a last resort**. Where more effective and appropriate alternatives to imprisonment are available they should be used. We believe that the harm caused by imprisonment should be ameliorated by minimising its use to cases where public safety or justice dictate that no other sanction would be appropriate.
- We are committed to the development of **evidence-led policies**. We believe that available research must inform policy formulation in Ireland to a much greater extent. Ultimately, we have identified strong evidence that a more humane and focussed penal system will also be more effective in reducing crime.

## **3. The Need to Change Direction**

This Government's penal policies are not working, for a number of reasons. Clearly, a change in direction is needed to ensure fairness and justice within our penal policy. In particular, a tendency to "throw legislation at the problem", rather than trying to address the practical issues of crime detection and prevention, has undermined public confidence in criminal justice policies.

Recent responses to crime have focused on increasing criminal penalties and decreasing the fair trial rights of suspects, when all the available evidence points to crime prevention and detection as being the most important areas to address in order to reduce crime levels.

### **• A Prison System in Crisis**

The prison system is overwhelmed and in crisis. Chronic overcrowding, rising violence and demeaning physical conditions in our prisons have contributed to institutions which are likely to exacerbate rather than address criminality. In short, our older prisons are an international disgrace, with the Council of Europe Committee for the Prevention of Torture describing them as "unsafe" for staff or prisoners, and the Inspector of Prisons directing that Mountjoy should not be operating at its current levels of overcrowding "because of [his] serious concerns for safety or life." Yet the planned building of Ireland's first "supermax" prison, Thornton Hall, if it is still going ahead, will simply increase

the numbers of offenders being contained, often for minor non-violent crimes, without any regard for their rehabilitation or for the prevention of future offending. An alternative approach would have revisited the plans previously made to redevelop Mountjoy prison on its existing Dublin city centre site.

- **The Social and Economic Cost**

Our prison system is currently growing at 10% each year, increasing from 2,400 in 1997 to over 4,400 today, and projections of this figure potentially reaching 5,000 by end 2010. We have one of the world's most expensive prison systems (per prisoner) and rising prisoner numbers are placing an increasing financial burden on the State at a time of great need in other areas of social spending. Public spending on prisons is unsustainable and delivers poor value for money. The average cost of providing a prison space in 2009 was €79,307 (Irish Prison Service, 2009). This compares with the much more cost-effective option of non-custodial sanction; the cost of provision of a community service order, for example, amounts to approximately one-quarter of the equivalent prison sentence (€4,000 per CSO, compared to an approximate cost of €18,000 for a three-month prison sentence. Source: Dept of Justice).

- **Failure of the Current System**

At the same time, the public are rightly concerned about the failure of our crime policies. Reoffending rates are high among our released prisoners and by planning to expand an already failing prison system, we are essentially planning for the future failure of our social policies.

#### **4. Translating Policy into Action – A Realistic Programme for Reform**

There have been a number of significant initiatives in the area of criminal justice policy in recent years, among them the Whitaker Report on Reform of the Prison System (1985); the Department of Justice's strategy document "Management of Offenders" (1994); the report of the National Crime Forum (1998); and the NESF Report on the Reintegration of Offenders (2002).

These initiatives made detailed and comprehensive recommendations for legislative and policy change. However, in many cases the recommendations emanating from these processes have not been implemented. At the same time, we have seen a large volume of reactive legislation, often without proper consideration by the Oireachtas, in response to public concern around crime patterns.

Labour believes that a coherent programme of reform is achievable based on a recognition of how the various elements of our penal system work in relation to each other. Such a programme of reform would be assisted by setting clear targets and timetables for delivery.

There are many areas where there is clear need for urgent reform and where it should be possible to bring forward proposals for change. Most positively, the

programme of reform we set out here will have wide ranging social and economic benefits.

Labour believes that there are FIVE key elements to our system of punishment, each of which require significant reform:

- 1. Sentencing**
- 2. Youth Justice**
- 3. The Prison System**
- 4. Planning the Future of our Prisons**
- 5. Alternatives to Prison**

#### **4.1 Sentencing**

The single biggest factor determining prison population size is sentencing law and practice. Labour believes that greater transparency and consistency in sentencing can be achieved while retaining the proper independence of the judiciary.

Presumptive and mandatory sentencing regimes have had a corrosive effect on the criminal justice system, increasing the numbers of people incarcerated, removing necessary judicial discretion and frustrating proportionate sentencing.

The presumptive sentencing regime under section 15A of the Misuse of Drugs Act, in particular, is having a significant effect on the size of the prison population, although it is clearly having little impact on the scale of the trade in illegal drugs or on senior figures in that trade. Of 205 gun murders between 1998 and November 2010, convictions have been secured in 25 cases (or 12%) and proceedings commenced in 63 cases (or 31%). These figures raise questions about the effectiveness of a strategy to combat gun crime that focuses on sentencing rather than on policing practice and on resources to ensure that the Gardaí are adequately equipped in the areas of detection and investigation.

- We will introduce a new Sentencing Act, which will specify that a core principle guiding the sentencing decision must be that imprisonment is an penalty of last resort. The Act will provide for the development of non-statutory sentencing guidelines for District, Circuit and Central Criminal Court judges, to guide sentencing practice and ensure greater consistency in sentences while maintaining independence of the judiciary.
- The prevalence of very short sentences being imposed at the District Court level is a particularly problematic aspect of our penal system. There is much international and domestic evidence that such sentences are counter-productive and present significant administrative difficulties for the prison system. Where possible, we would support diversion from prison of many of those offenders currently being sentenced for minor non-violent crimes.

- In this context, Labour supports substantial reform of District Court sentencing practice. In particular, in the Sentencing Act we would include a statutory provision equivalent to section 96 of the Children Act, which would oblige District Judges to consider all alternatives before imprisoning someone before them. This would be accompanied by an obligation on sentencing judges at the District Court level to provide brief written explanations for all custodial sentences. In addition, judges would be required to consider imposing a non-custodial sanction such as a community service order in all cases where a prison sentence of 6 months or less might otherwise be imposed.
- Legislation and resources may not be enough to change judicial practice, so dialogue with the judiciary and collation of sentencing practice across the country will provide the necessary evidence base to allow more informed sentencing. In particular, Labour supports and will provide resources for the roll-out of ISIS (the Irish Sentencing Information System), currently being piloted, which if developed will provide essential information on current sentencing practice and average sentences across a range of offences nationally.
- The commitment in the revised Programme for Government to “ensure that prison is the option of last resort for non-serious crime” in general, and specifically the measures proposed in the Fines Act and recent initiatives to end the use of imprisonment for civil debt, are most welcome. In this regard, the operation of the Fines Act 2010, once it is commenced, must be monitored to ensure that it succeeds in reducing the practice of imprisonment for non-payment of fines. In addition, sufficient resources must be applied to ensure that community service orders may be imposed with greater consistency, and with the involvement of local community groups or training agencies. Greater use of non-custodial sentences is far more cost effective than continuing to increase the number of people being held in our expensive prisons.

## **4.2 Youth Justice**

The area of youth justice is critical, not only because of the devastating effect of crime and detention on young people, but also because of the wider significance of youth justice policy for the adult criminal justice system. Labour believes that the Children Act 2001 and the National Youth Justice Strategy provide a solid framework for the progressive reform of youth justice policy and practice. The issue here is one of implementation - if the existing strategy is supported it will provide the basis for the continuing decline in the need to detain children. However, there are gaps in the current system and the full implementation of the Act requires resources and political support.

### **• Community Policing and Garda Diversion**

The role of the Garda as the first contact that young people have with the justice system is crucial in forming attitudes to crime and justice among young people. The continuing growth of the Garda Diversion Programme is a major success story in preventing young people getting drawn into the criminal justice system. This programme must continue to receive appropriate support and

resources. We would increase the number of Juvenile Liaison Officers and the resources of the Probation and Welfare service, while expanding the restorative justice programme provided for under the Children Act. We would also ensure that sufficient resources are available to supervise and support teenagers on bail, and to allow the HSE to support children and teenagers at risk of involvement in crime.

- **Case Management, Remand and Bail**

We still have a high rate of detention of children on remand and long delays in bringing young people before the court. Delays in prosecution may sometimes be inevitable, however in some instances delays can mean that opportunities are missed to respond to offending behaviour before it becomes more serious. Delays and the need for detention on remand can both be reduced by practical measures such as the case management system being implemented in Dublin at present.

- **Alternatives to Detention**

Many of the alternative sanctions set out in the Children Act, such as family conferencing, are only available in certain parts of the country and being used in a low number of cases. This suggests that there is potential for even greater levels of diversion away from detention in cases where young people are before the courts.

- **Youth Detention**

The continuing use of St. Patrick's Institution for the imprisonment of children is a clear violation of Ireland's human rights obligations and should cease immediately. While there is much good practice in the child detention school system, the absence of any independent complaints mechanism and the exclusion of children held in St. Patrick's from the complaints remit of the Ombudsman for Children are a major gap in accountability that can be addressed easily through legislation.

### **4.3 The Prison System**

A fundamental principle informing our policy is that the human rights obligations of Ireland as a State-party to treaties such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the UN Convention Against Torture must be fully respected. Areas of clear violations of human rights at present, which must be addressed, include:

- **Prison Conditions**

The physical conditions in our older prisons are completely unacceptable and have been the subject of consistent criticism from international bodies. Labour believes that these can be addressed separately from the issue of prison expansion and that the replacement or refurbishment of old prison

stock can be pursued without the huge costs that would be involved in the proposed scale of prison expansion. In particular, the provision of in-cell sanitation for all prisoners in Mountjoy, Cork and Limerick prisons must be made a priority. At the very least, the short-term measures proposed by the Inspector of Prisons (Report on Mountjoy Prison 2009, published October 2010) to end the current “inhuman and degrading” practice of slopping-out must be implemented without delay.

- **Overcrowding**

The Inspector of Prisons and international human rights bodies have categorically stated that overcrowding is the most important risk factor in relation to prisoner violence and self-harm. The Inspector has already recommended safe custody limits for certain prisons and the Irish Penal Reform Trust has set out a number of practical measures that can be taken to reduce overcrowding in the short term. Overcrowding not only exacerbates problems such as violence and drug use in prisons; it also undermines attempts at rehabilitation of offenders. Again, immediate measures must be taken to address chronic and dangerous overcrowding at all prisons. In particular, the Inspector of Prison’s recommendation (2009) that no more than 540 prisoners should be accommodated at any one time in Mountjoy Prison must be implemented.

- **Accountability**

The continuing absence of an independent complaints mechanism, such as a Prisoner Ombudsman, within the prison system is a major weakness of the system, as is the absence of an effective system for the investigation of deaths in prison. The European Prison Rules should be implemented, as they provide a coherent philosophy and set of standards for imprisonment, asserting a set of basic standards for the conditions within prisons. Finally, in order to ensure true accountability within the system, a genuinely independent prisons authority is required. The current IPS does not meet the recommendation made in the Whitaker Report that the authority should constitute an executive or board separate to the Department of Justice, and staffed by persons with experience and competence including in the fields of psychology and psychiatry, education, care and social reintegration.

- **Women in Prison**

Women in the criminal justice system have specific needs and rights. In general, they also pose a lower security risk and the lack of any open detention facility for women is a major gap in our system. The great progress made in providing a progressive prison regime for women at the Dóchas Centre is now being undermined by overcrowding, and conditions at Limerick Women’s Prison are unacceptable. But the answer should not lie in building a larger prison for women in the Thornton Hall complex; rather, an overall review of women’s imprisonment should be conducted to assess the merits of diversion from prison of many women, particularly



those with young children who may be taken into care as a result of their mother's incarceration.

- **Release and Reintegration of Offenders**

Given the high rates of re-offending by released prisoners, the area of reintegration of offenders is critical. More resources need to be invested in programmes to provide released prisoners with pathways out of crime upon their release from prison; and to ensure that planning can be done within prison to prepare offenders for release. In particular, Labour would support the re-introduction of the Connect programme, previously operated in Mountjoy Prison and the Dóchas Centre, which provided intensive rehabilitative supports for prisoners prior to their release.

#### **4.4 Planning the Future of our Prison System**

Our recent prison-building programmes were initiated in a situation when little data on prison populations was publicly available, and certainly not published. In other jurisdictions complex models for projecting prison population trends are employed and are made accessible to members of the public. The proper design and planning of institutions should be based on detailed data on demographic trends, including age and gender, in the prisons and in the general population.

- **Moving towards Smaller and Local Prisons**

A geographical breakdown of offenders and prisoners should be used to identify the areas of the country where prisons might most usefully be located, incorporating the principle of more small prisons rather than larger institutions (so called 'localism'). A detailed picture of the current prison population – types of offenders, length of sentences being served – should also inform the general security classification needs of our prisons (e.g. the need for an open prison for women and the need for a prison for young adult offenders).

**Table A**

Cost per Available, staffed Prison Space - CLOSED Prisons	79,307 2009
Cost per Available, staffed Prison Space - OPEN Prisons	50,521 2009

In particular, greater commitment should be made to providing increased numbers of places in open prisons – currently only 6% of the prison

population are housed in open prisons (Loughan House and Shelton Abbey), which are much less costly to maintain, and more effective in terms of rehabilitation prospects and prevention of re-offending. By contrast with our 6%, in Denmark 38% of all prisoners are in open prisons. Both Norway and Finland, each of which has about 32% in open facilities, have embarked on programmes to increase their proportion, even as they reduce their overall prison populations. The profile of prisoner populations is no different in these Nordic countries than it is in Ireland; what can be done successfully there can be done here. If Ireland were to have, for example, one-quarter of our current prison population in open prisons, savings of between 30-40 million euro could be made per annum (based on the Nordic experience, which recognises that the cost of holding someone in an open prison is about half that in a closed prison). If Thornton Hall is to go ahead, consideration should therefore be given to remodelling at least part of the complex along 'open prison' principles.

- **Setting Goals to Limit the Prison Population**

Ultimately, the size of the prison population in a given society is determined by a complex series of factors, but is predicated in the first instance on a political choice. The long-term direction of prison policy must be informed by a decision about the number of prisoners Ireland *wants* to have. Labour believes the guiding principle in making this choice should be that imprisonment should be used sparingly. If diversion in youth justice policy continues to be supported; if changes are introduced to sentencing law to divert offenders; if the practice of 'day release' for selected prisoners were put on a more formal footing; and if community sanctions are properly resourced; then Labour believes that prison expansion will no longer be necessary; and our current prison population can be reduced.

#### **4.5 Alternatives to Prison**

Our historic approach to punishing crime is based on the centrality of the prison in our justice system. It is clear that the effective resourcing of community sanctions offers a cheaper and more effective way of punishing and preventing many categories of crime.

We recognise that the option of imprisonment is necessary to protect society and to punish the most serious offenders, particularly those engaged in violent crime; but prison is a wasteful and unnecessary option in many cases of minor crime; and it should not be the default sanction in our justice system, particularly at District Court level.

A number of categories of prisoners could be completely or largely diverted from the prison system immediately, and changes could be made to sentencing law and practice that would have a long-term effect in this regard.

## **Diversion of Certain Categories of Offender from Imprisonment**

- We do not believe that there is a need to create new or more complicated community sanctions options at the point of sentence. However, making diversion a reality requires resources to be invested in the Probation Service to administer schemes such as the Community Service Order Scheme.
- In November 2009, the Women in Prison Reform Alliance made a proposal to the Minister for Justice, Equality and Law Reform for a review of policy and practice with regard to women offenders. Labour supports this initiative and, as stated above, believes that such a review could identify non-custodial sentencing options for a significant proportion of our female prison population.
- Labour supports the Drugs Court initiative and would ensure its full roll-out from the current pilot phase with an easing of the current restrictions on those offenders who may be eligible.
- Labour also supports the roll-out of restorative justice programmes for adult offenders, based on final report of the National Commission on Restorative Justice (December 2009) and the models in operation in the Nenagh and Tallaght areas. We recognise the need for additional resourcing of the Probation and Welfare service to ensure that these programmes can be carried out effectively and sensitively as far as victims are concerned.
- Studies have shown that far too many of those incarcerated in prison are suffering from mental disabilities or psychiatric illness. More spaces should be available in secure psychiatric units for such prisoners. In addition, we would resource the roll-out of the court diversion programme for those with psychiatric illness currently being run by the National Forensic Mental Health Service in Dublin.

## **5. Supports for Victims of Crime**

Despite some changes to the law giving them greater recognition, victims of crime are still often treated by the criminal justice system as no more than prosecution witnesses. We will ensure that victims and their needs are at the heart of the justice process and that their rights to information, advice and other appropriate assistance are met effectively and efficiently. Although a long overdue Victims' Charter and guide to the criminal justice system was published in July 2010, this does not have statutory basis and remains unenforceable in law. Although the Commission for the Support of Victims of Crime has an important role in co-ordinating and providing funding for local victim support services, such services are not consistently available to victims in every area nationally.

- Victim support services should be established and co-ordinated by a national agency or commission across different areas, to ensure equality of access to supports for victims in every geographical location, and at least in every county. In order to achieve this, the role of the Commission for the Support of Victims of Crime requires further development and strengthening.
- We would undertake a comprehensive step-by-step examination of the role of the victim in criminal investigations and proceedings, because there is scope for reform of court procedures in criminal trials with a view to reducing the trauma for victims associated with legal proceedings. Currently, the

adversarial and accusatorial nature of the Irish criminal justice system disadvantages the victim in several respects.

- In particular, Irish law does not recognise victims of crime as a distinct category of witness. Although the process of testifying may be particularly traumatic for victims, they are generally subject to the same rules and procedures as ordinary witnesses. Thus, we believe that the range and depth of special measures (such as live-television link and video-recorded evidence) afforded to victims as witnesses under Irish law should be extended
- The position of victims of rape and other sexual offences raises particular concerns, some of which have been addressed in legislation or detailed elsewhere. Our proposed reforms would take account of the particular needs of this group of victims and, where appropriate, the desirability of additional or heightened measures of protection.

## **Conclusion**

For the Labour Party, fairness and justice are key principles in developing any social policy. These concepts are also central to the formulation of criminal justice policy. The policy measures we have outlined above are based on thoughtful and considered examination of the evidence on ‘what works’ and what is best practice within any system of sentencing and punishment.

The measures we propose would undoubtedly enhance the effectiveness, the fairness and the justice of our penal system, and we believe that they would contribute significantly towards the making of a fairer, safer, more secure society for us all.